



State of Rhode Island and Providence Plantations  
**DEPARTMENT OF EDUCATION**  
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Enclosure 5a  
July 17, 2018

Ken Wagner, Ph.D.  
Commissioner

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**TO:** Members of the Council on Elementary and Secondary Education

**FROM:** Ken Wagner, Ph.D., Commissioner

**RE:** Administrative Procedures Act (APA) Regulatory Process - Update

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As you may recall from previous Council meetings, the Administrative Procedures Act (APA) of 2016 requires all state agency regulations be converted to a standardized format by December 2018 to ensure public access and transparency. Regulations not converted to this standardized format by December 2018 will cease to hold their full force and effect.

The simplest route to complete this statutory requirement is to directly transfer the old regulation into the new format with no change in substance (this is called a “codification”).

There are several rules in the APA, however – including rules about what kinds of content properly belong in regulation, as opposed to in statute or guidance – which may, depending on the extent of the change required, prompt limited rule-making and opportunities for public comment during the transfer process (called “direct file”) or “full rule-making” and opportunities for public comment.

Finally, if the regulation is no longer necessary (e.g., it was tied to an old federal law, or the content of the regulation is addressed in another regulation or through law or guidance), a formal “repeal” of the existing regulation is strongly recommended.

A full listing of RIDE’s regulations with the corresponding action required (codification, direct file, full rule-making, repeal) is included within the attached document. Please note that, although the statutory deadline is December 31, 2018, the Office of Regulatory Reform established a government-wide processing deadline of August 31, in part to allow sufficient time for public comment, as necessary.

The attached document also includes a “next steps” column that describes any necessary follow-up actions after the December 31 deadline. For example, although the School Facilities regulations will be converted to the new format by December 31, they will be revisited again soon thereafter for substantive updates to ensure compliance with the recently enacted school facility legislation.

While every state agency is different, RIDE’s situation is unique in the combination of the number of existing regulations coupled with the existence of the Council as an independent governing board. For example, the Water Authority has an independent board but very few regulations. The Department of Health has many more regulations than does RIDE, but no independent board. The most analogous state agency to RIDE, the Office of the Post-Secondary Commissioner (OPC), does not have any regulations that meet the definitions of the APA.

Regulations Update  
July 17, 2018

Regulation	Rationale	Status	Next Step
<b>NEW FILING- Regulations developed in the past two years</b>			
Regulations Governing Protection for Students Rights to be Free from Discrimination on the Basis Of Sex, Gender, Sexual Orientation, Gender Identify, or Gender Expression		Complete	
RI Board of Education Regulations for Dual Enrollment		Complete	
<b>CODIFICATION- Clean formatting into new APA</b>			
Secondary Design: Middle and High School Learning Environments and the RI Diploma System		Complete	
Basic Education Program		Complete	
Regulations Governing Service Agreements Among School Districts		Complete	
Charter School Regulations		Complete	
Teacher Competency in English		Complete	
Virtual Learning Regulations		Complete	
CTE Regulations		Complete	
High School Equivalency Program Regulations		Complete	
RI Statewide Bullying Policy		Complete	
<b>DIRECT FINAL- Minor revisions as a result of format change or moving to full promulgation: Public notice</b>			
Regulations Governing the School Calendar and Length of the School Day (Adopted by Council in Dec. 2015)	An authority and purpose statement needs to be added. This addition triggers a direct final rather than a codification	On track	
RI Nutrition Requirements 2009 for RI School Food Service Programs		On track	
State Regulations Education of Homeless Children and Youth		On track	
Regulation of the Comprehensive Early Childhood Education Program- Standards for		On track	

Approval of Preschool and Kindergarten Programs			
Educator Evaluation System Standards		On track	
Regulations Governing the Education of English Language Learners	Includes updated language and citations without any substantive changes. Preserves protection and safeguards for students		Engage field and begin revision process in 2019
RI School Construction Regulations	These regulations have no material change. We are required to remove the appendix thus necessitating a direct final rather than codification. They are scheduled for revisions in the 2018-19 school year	On track	Begin revision process in 2018-19 school year and integrate the housing aid regulations
Rules Governing the Annulment of Certificate (Commissioner's regulations adopted in 1985)	These regulations were promulgated but never filed with the Secretary of State's office. They are being placed in APA format as is	On track	Remove one section of these regulations about reporting misconduct. That topic is now part of the certification regulations
Physical Restraint Regulations	Added language to align with revised state statute	On track	
State Regulation Education of Homeless Children and Youth	Referenced in RI's ESSA plan	On track	
<b>REGULAR RULEMAKING- More significant format revisions: Full process, includes public engagement</b>			
Standards for the Approval of Nonpublic Schools	These regulations were promulgated but never filed with the Secretary of State's Office. They are used to provide safeguards for students in nonpublic schools. Will require future revision	On track	
Regulations Governing the Education of Children with Disabilities	These regulations now cite federal and state statute and have extended school year and specific disability regulations integrated within them	On track	
Regulations Governing the Certification of Educators in RI	Under revision and will go to public comment in the fall	On track	Council will vote to go out for public comment later this year
Declaratory Order Procedure	Required under APA	On track	

REPEAL-			
Regulations of the RI Regents for Elementary and Secondary Education- Title A	New by-laws were developed with the formation of the new Board. We need to develop and promulgate standards for the <i>Procedural Rules for Appeals to and Hearings Before the Commissioner</i>	Complete	
RI Grade Span Expectations for Civics, Government and Historical Perspectives/ Rhode Island History	These standards, as all other content standards, are endorsed by the Council and not needed in regulation	Complete	
Protocol for Interventions: Persistently-Lowest Achieving Schools	These regulations align to NCLB and those requirements, which are no longer federal law. Rhode Island's approved ESSA plan captures current federal law and state actions	On track	The Council will be asked to endorse Rhode Island's federal ESSA plan and direct the Commissioner to implement the plan
Specific Learning Disability Eligibility Criteria	Consolidating these with special education regulations but will make no material change to scope and authority	On track	Repeal when Student with Disabilities Regulations are completed
RI Extended School Year Standard	Consolidating these with special education regulations but will make no material change to scope and authority	On track	Repeal when Student with Disabilities Regulations are completed
Regulations Concerning the Employment and Duties of Principals (1998)	These regulations were promulgated but never filed with the Secretary of State's Office. A section of the regulations that requires contracts for principals is added to the Certification Regulations	On track	Repeal when the Educator Certification Regulations is complete
Student Rights- Disciplinary (1976)	These regulations were promulgated but never filed with Secretary of State's Office. These regulations are addressed in both federal statute and case law	On track	
Regulations on School Housing Aid (adopted by Board of Regents 1970)	These regulations were promulgated but never filed with the Secretary of State's Office. They are out-of-date	On track	Repeal/sunset and update as part of the revision of the School Construction Regulations